

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**SPECIAL CIVIL APPLICATION No. 8375 of 2006****For Approval and Signature:****HONOURABLE MR.JUSTICE RAVI R.TRIPATHI**

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- 1 Whether Reporters of Local Papers may be allowed to see the judgment ?
 - 2 To be referred to the Reporter or not ?
 - 3 Whether their Lordships wish to see the fair copy of the judgment ?
 - 4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
 - 5 Whether it is to be circulated to the civil judge ?
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MADHUKANT PRANLAL SHAH - Petitioner(s)
Versus
BANK OF INDIA - Respondent(s)

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Appearance :

MS AMRITA M THAKORE for Petitioner(s) : 1,
MR BD KARIA for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE RAVI R.TRIPATHI**Date : 22/06/2006****ORAL JUDGMENT**

1. Present is the petition filed by the petitioner, being aggrieved by order dated 08.03.2006 passed by the Presiding Officer of Debt Recovery Tribunal, Ahmedabad in Delay Condonation Application No.451 of 2004. The Presiding Officer of the Tribunal, after hearing the

learned advocates, was pleased to condone the delay of 7 days, but the application filed by the present petitioner praying that the Tribunal should waive the Court Fees payable on an appeal, was rejected. The petitioner was granted one month's time to deposit the Court Fees.

2.The learned advocate appearing for the petitioner submitted that an application was filed for stay of the recovery proceedings before the Recovery Officer. That application was rejected. Against that order, an appeal is filed. The learned advocate for the petitioner submitted that on such appeal, no Court Fee is payable. The learned advocate submitted that it is no doubt true that the appeal is filed under the provisions of Section 30 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (hereinafter referred to as "The Act"). But then the amount is not ascertainable in the stay application, preferred before the Recovery Officer, and hence there is no question of paying the Court Fees under Item 5 of the table, prescribed under Sub Rule (2) of Rule 7 of the Debt Recovery Tribunal (Procedure) Rule, 1993 (hereinafter referred as the "Rules" for short).

3.The learned advocate appearing for the petitioner

strenuously submitted that Item No.5 of the table provides that if an appeal is preferred against the order of the Recovery Officer where in the amount for which the appeal is filed is disclosed, prescribed Court Fee is payable. The learned advocate submitted that in cases where the amount is 'ascertainable', the Court Fee is required to be paid. But in a matter like the one on hand, where it was only 'an application for stay' of the proceedings and that application is rejected, there was no fixed 'amount' against which an appeal is filed and, therefore, no 'Court Fee' is payable.

4. The submissions of the learned advocate for the petitioner cannot be accepted for the simple reason that Section 30 of the Act provides for filing of an appeal against an order of the Recovery Officer. Section 30 does not make any distinction between the order which can be branded as 'the final order' and the one which is the subject matter of this petition namely 'rejecting the stay application'. That being so under Section 30 an appeal can be filed against any order of the Recovery Officer. Be it 'final order' or an 'interim order'. That being so, if an appeal is filed under Section 30 of the Act, Item No.5 of the table

under Sub Rule (2) of Rule 7, comes into play and under that an amount of Court Fee becomes payable. If the distinction cannot be drawn between two sets of orders of Recovery Officer for filing of an appeal, on the same reasoning distinction cannot be drawn between two sets of appeals filed against an order of Recovery Officer for the payment of Court Fees.

5. In the result the present petition fails. The amount of Court Fee be paid in accordance with law. However, in the interest of justice, the time of one month granted to pay the Court Fee, is extended for a period of one month from the date of the receipt of this order. Petition is dismissed. Notice is discharged. No order as to cost.

(RAVI R. TRIPATHI, J.)

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